

## 21 C.J.S. Courts § 234

Corpus Juris Secundum | May 2023 Update

### Courts

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### VI. Rules of Adjudication, Decisions, and Opinions

#### C. Law of the Case

## § 234. Law of the case, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Courts](#)  99(1), 99(7)

**A decision by the court on a point in a case becomes the law of the case unless it is reversed or modified by a higher court.**

The law of the case doctrine states that a court's decision on the applicable rule of law should continue to govern the same issue in later stages of the same case.<sup>1</sup> Under the doctrine, the parties are deemed to have waived the right to challenge that decision at a later time.<sup>2</sup> After a judge has decided an interlocutory matter in a pending suit, a second judge, confronted at a later stage of the suit with the same question in the identical matter, should thus refrain from disturbing the first ruling.<sup>3</sup> Whatever is once established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, so long as the facts on which that decision was predicated continue to be before the court,<sup>4</sup> unless the decision is reversed or modified<sup>5</sup> or vacated.<sup>6</sup> Nonetheless, as a trial progresses, the presiding judge remains free to alter earlier rulings.<sup>7</sup> Furthermore, the law of the case doctrine does not preclude a trial court from considering, as a matter of first impression,<sup>8</sup> those issues that were not expressly or implicitly disposed of by an appellate decision.<sup>9</sup>

Under the doctrine, a court will not reexamine an issue in the same case that was decided previously by the same or higher court<sup>10</sup> or a court of coordinate jurisdiction,<sup>11</sup> and an inferior court has no discretion to disregard the mandate of a superior court in the same case.<sup>12</sup> In some jurisdictions, however, the law of the case doctrine applies only to rulings by an appellate court and not to those by a trial court.<sup>13</sup> An appellate decision becomes the law of the case and is controlling on both the trial court and on any further appeal in the same case.<sup>14</sup>

The doctrine applies only to legal determinations that were necessarily resolved on the merits in a prior decision.<sup>15</sup> The law of the case doctrine applies to issues of law rather than fact.<sup>16</sup> However, the doctrine precludes later evidentiary hearings on issues that were finally adjudicated before an appellate court of last resort.<sup>17</sup> The former decision is binding only to the extent of the precise question decided,<sup>18</sup> either explicitly or implicitly,<sup>19</sup> and is not binding as to facts or issues that were not adjudicated or involved,<sup>20</sup> such as questions that might have been decided but were not.<sup>21</sup> However, subjects that an appellate court does not discuss, because the parties did not raise them, do not become the law of the case by default.<sup>22</sup>

The former decision is binding only in later proceedings in the same case involving the same parties and subject matter<sup>23</sup> and not as against parties who had no notice or opportunity to be heard at the time the decision was rendered.<sup>24</sup> Generally, a state court decision constitutes the law of the case in a later action in a federal court involving the same matter and the same parties<sup>25</sup> though the application of the doctrine upon a transfer of a case from a state to a federal court is discretionary.<sup>26</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The gist of the law-of-the-case doctrine is that once an appellate court either expressly or by necessary implication decides an issue, the decision will be binding upon all subsequent proceedings in the same case. [Bradley v. Village of University Park, Illinois](#), 59 F.4th 887 (7th Cir. 2023).

Charges arising from attempted murder for which defendant had been acquitted were not re-litigated in the same proceeding in violation of the law of the case doctrine, and thus government did not act improperly by referencing evidence related to the attempted murder in its closing statements in racketeering prosecution; evidence did not exclusively concern the attempted murder, as much of it related to gang's policy of attacking individuals who posed a threat to the gang's drug-trafficking enterprise, which was directly related to racketeering conspiracy charge, and evidence concerning gun allegedly used in attempted murder was relevant to separate murder charge that was submitted to jury. [United States v. Briseno](#), 843 F.3d 264 (7th Cir. 2016).

Court of Appeals' prior determination that store owner's claim seeking prospective relief from county's adult entertainment ordinances was rendered moot by ordinances' repeal did not actually or by implication resolve whether claim for retrospective relief might present live controversy, and thus law of the case doctrine did not bar owner's claim for retrospective relief. [Tokyo Gwinnett, LLC v. Gwinnett County, Georgia](#), 940 F.3d 1254 (11th Cir. 2019).

Under the law-of-the-case doctrine, courts may not revisit issues already decided explicitly or by necessary implication in the same case. [De Csepel v. Republic of Hungary](#), 27 F.4th 736 (D.C. Cir. 2022).

Because property owners pled their claims generally against all named defendants, the trial court's determination with respect to the date property owners' claims accrued with regard to one defendant became the law of the case with regard to when they accrued for all defendants. [Norbeck v. Flathead County](#), 2019 MT 84, 438 P.3d 811 (Mont. 2019).

Under the "law of the case doctrine," only such issues as have actually been decided, either explicitly, or by necessary inference from the disposition of the first appeal, constitute the law of the case. [State v. Robinson](#), 164 A.3d 1002 (N.H. 2017).

Under the law of the case doctrine, a party may not, in the same case with the same facts, relitigate issues that were decided in a prior appeal or issues which would have been resolved had they been properly presented in the first appeal. [Ring v. North Dakota Department of Human Services](#), 2021 ND 151, 963 N.W.2d 255 (N.D. 2021).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 U.S.—*Musacchio v. U.S.*, 136 S. Ct. 709, 193 L. Ed. 2d 639 (2016); *Pepper v. U.S.*, 562 U.S. 476, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011); *Arizona v. California*, 460 U.S. 605, 103 S. Ct. 1382, 75 L. Ed. 2d 318, 36 Fed. R. Serv. 2d 11 (1983), decision supplemented, 466 U.S. 144, 104 S. Ct. 1900, 80 L. Ed. 2d 194 (1984); *Romero v. Allstate Insurance Company*, 2016 WL 1056698 (E.D. Pa. 2016).  
  
Ill.—*People v. Christian*, 2016 IL App (1st) 140030, 2016 WL 868792 (Ill. App. Ct. 1st Dist. 2016).  
  
Nev.—*Dictor v. Creative Management Services, LLC*, 126 Nev. 41, 223 P.3d 332 (2010).  
  
N.Y.—*Saccoccia v. Greenberg*, 136 A.D.3d 881, 26 N.Y.S.3d 123 (2d Dep't 2016).  
  
Utah—*Robinson v. Robinson*, 2016 UT App 32, 368 P.3d 147 (Utah Ct. App. 2016).  
  
Wyo.—*In re Guardianship and Conservatorship of Parkhurst*, 2010 WY 155, 243 P.3d 961 (Wyo. 2010).  
  
**Rulings in unreported opinions**  
Unreported decisions are still binding on the parties as establishing the law of the case.  
  
Ga.—*Rolleston Living Trust v. Kennedy*, 277 Ga. 541, 591 S.E.2d 834 (2004).
- 2 U.S.—*U.S. v. Burroughs*, 810 F.3d 833 (D.C. Cir. 2016).
- 3 R.I.—*Greensleeves, Inc. v. Smiley*, 942 A.2d 284 (R.I. 2007).
- 4 Ala.—*Bagley ex rel. Bagley v. Creekside Motors, Inc.*, 913 So. 2d 441, 56 U.C.C. Rep. Serv. 2d 853 (Ala. 2005).  
  
Miss.—*Public Employees' Retirement System v. Freeman*, 868 So. 2d 327 (Miss. 2004).  
  
Vt.—*In re Taylor's Estate*, 110 Vt. 80, 2 A.2d 317 (1938).
- 5 U.S.—*Lacy v. Gardino*, 791 F.2d 980 (1st Cir. 1986).  
  
Md.—*Ralkey v. Minnesota Min. & Mfg. Co.*, 63 Md. App. 515, 492 A.2d 1358 (1985).
- 6 U.S.—*No East-West Highway Committee, Inc. v. Chandler*, 767 F.2d 21 (1st Cir. 1985).  
  
Cal.—*People v. Hamilton*, 45 Cal. 3d 351, 247 Cal. Rptr. 31, 753 P.2d 1109 (1988), as modified on denial of reh'g, (July 28, 1988).
- 7 U.S.—*Perry v. City of Chicago*, 733 F.3d 248 (7th Cir. 2013); *Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014).
- 8 *Romero v. Allstate Insurance Company*, 2016 WL 1056698 (E.D. Pa. 2016).
- 9 U.S.—*Original Brooklyn Water Bagel Co., Inc. v. Bersin Bagel Group, LLC*, 2016 WL 1169062 (11th Cir. 2016); *Romero v. Allstate Insurance Company*, 2016 WL 1056698 (E.D. Pa. 2016).
- 10 U.S.—*Lucas Automotive Engineering, Inc. v. Bridgestone/Firestone, Inc.*, 275 F.3d 762 (9th Cir. 2001).

Pa.—*Parker v. Freilich*, 2002 PA Super 188, 803 A.2d 738 (2002).

**Evidentiary ruling in prior trial**

An evidentiary ruling in a prior trial is not the law of the case upon retrial since the order for a new trial wipes the slate clean.

Pa.—*Com. v. Paddy*, 569 Pa. 47, 800 A.2d 294 (2002).

R.I.—*Malinowski v. United Parcel Service, Inc.*, 792 A.2d 50, 18 A.L.R.6th 877 (R.I. 2002).

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D.C.—*Puckrein v. Jenkins*, 884 A.2d 46 (D.C. 2005).

N.J.—*Akhtar v. JDN Properties at Florham Park, L.L.C.*, 439 N.J. Super. 391, 109 A.3d 228 (App. Div. 2015), certification denied, 221 N.J. 566, 115 A.3d 833 (2015).

**A.L.R. Library**

Application of doctrine of law of the case to review by one federal court of appeals of determination by another federal court of appeals, 74 A.L.R. Fed. 878.

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Ohio—*State ex rel. Non-Employees of Chateau Estate Resident Assn. v. Kessler*, 107 Ohio St. 3d 197, 2005-Ohio-6182, 837 N.E.2d 778 (2005).

13

Ky.—*Dickerson v. Com.*, 174 S.W.3d 451 (Ky. 2005).

Nev.—*Dictor v. Creative Management Services, LLC*, 126 Nev. 41, 223 P.3d 332 (2010).

14

Iowa—*Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006).

15

N.Y.—*Saccoccia v. Greenberg*, 136 A.D.3d 881, 26 N.Y.S.3d 123 (2d Dep't 2016).

16

Cal.—*Searle v. Allstate Life Ins. Co.*, 38 Cal. 3d 425, 212 Cal. Rptr. 466, 696 P.2d 1308 (1985).

Mont.—*State v. Gilder*, 2001 MT 121, 305 Mont. 362, 28 P.3d 488 (2001).

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Mont.—*State v. Gilder*, 2001 MT 121, 305 Mont. 362, 28 P.3d 488 (2001).

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U.S.—*Quern v. Jordan*, 440 U.S. 332, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979).

Tex.—*Larson v. State*, 2016 WL 1268003 (Tex. App. Texarkana 2016), reh'g overruled, (Apr. 26, 2016)/

Utah—*Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, 250 P.3d 465 (Utah 2011) (identical issue).

19

U.S.—*Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694 (10th Cir. 2004); *Original Brooklyn Water Bagel Co., Inc. v. Bersin Bagel Group, LLC*, 2016 WL 1169062 (11th Cir. 2016).

Fla.—*Dickerson v. Shikany*, 485 So. 2d 11 (Fla. 3d DCA 1986).

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U.S.—*Smith Intern., Inc. v. Hughes Tool Co.*, 759 F.2d 1572 (Fed. Cir. 1985).

Tex.—*Lindquist v. City of Pasadena Texas*, 669 F.3d 225 (5th Cir. 2012).

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U.S.—*Marine Overseas Services, Inc. v. Crossocean Shipping Co., Inc.*, 791 F.2d 1227 (5th Cir. 1986); *Smith Intern., Inc. v. Hughes Tool Co.*, 759 F.2d 1572 (Fed. Cir. 1985).

22

Nev.—*Recontrust Co. v. Zhang*, 317 P.3d 814, 130 Nev. Adv. Op. No. 1 (Nev. 2014).

23

U.S.—*U.S. v. Maybusher*, 735 F.2d 366 (9th Cir. 1984).

Ala.—*Windom v. Sheffield Enterprises, Inc.*, 510 So. 2d 237 (Ala. 1987).

Md.—*Ralkey v. Minnesota Min. & Mfg. Co.*, 63 Md. App. 515, 492 A.2d 1358 (1985).

24 Va.—*Motley v. H. Vicello & Bro.*, 132 Va. 281, 111 S.E. 295 (1922).

25 U.S.—*Gage v. General Motors Corp.*, 796 F.2d 345 (10th Cir. 1986).

26 U.S.—*Quinn v. Aetna Life & Cas. Co.*, 616 F.2d 38 (2d Cir. 1980).

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